

Members

Doug Stratton, Chairperson
Sen. Vaneta Becker
Sen. Sue Landske
Sen. James Lewis
Sen. Samuel Smith
Rep. Craig Fry
Rep. Ron Herrell
Rep. Dick Dodge
Rep. Gerald Torr



INTERIM STUDY COMMITTEE ON DIALYSIS COVERAGE

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Committee

Authority: P.L. 111-2008 (HEA 1284-2008)

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MEETING MINUTES¹

Meeting Date: October 1, 2008
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Doug Stratton, Chairperson; Sen. Vaneta Becker; Sen. James Lewis; Rep. Craig Fry; Rep. Ron Herrell; Rep. Dick Dodge; Rep. Gerald Torr.

Members Absent: Sen. Sue Landske; Sen. Samuel Smith.

Mr. Stratton called the meeting to order at 10:10 a.m. and asked the members to introduce themselves. He read the responsibilities of the Committee, noted that proposed legislation and the final report of the Committee would be discussed during the meeting, and asked the members to state any specific concerns or recommendations for inclusion in the final report.

Rep. Herrell stated that he has no specific recommendations at this time. He raised his concern that there is a lack of good faith in the negotiations between insurers and dialysis facilities and questioned whether there is anything the General Assembly can do to ensure good faith negotiations among the parties.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Rep. Torr noted that there seems to be a consensus among those testifying before the Committee that Medicare and Medicaid reimbursement rates are insufficient to cover the cost of dialysis treatment and allow for any profit to dialysis facilities. He recommended that the final report include a recommendation to Congress to address the issue of insufficiency of Medicare and Medicaid reimbursement rates for dialysis treatment.

Sen. Lewis and Rep. Dodge each stated that they have no specific recommendations at this time.

Sen. Becker shared her concerns about billing of patients, patients receiving payment rather than payment being sent directly to dialysis facilities, and balance billing. Noting the debilitating nature of end stage renal disease (ESRD), she recommended prohibiting balance billing, attempting to ensure fair payment rates to allow patients to choose a dialysis facility, and a governmental entity to set payment rates.

Rep. Fry stated that he would like to see a balance struck between dialysis facility and insurer needs. He recommended that patients be allowed to choose the most convenient dialysis facility, no required change of dialysis facility as a condition of coverage, assignment of benefits for dialysis coverage, protection of patients from changes in coverage during treatment, and possible oversight by the Indiana Comprehensive Health Insurance Association with some restructuring of membership. Rep. Fry stated that his goal is to remove dialysis patients from involvement in conflicts between insurers and dialysis facilities.

Mr. Stratton prefaced his statements by acknowledging that he, unlike the legislative members of the Committee, has no constituency to represent. He shared his initial belief that the recent coverage disagreements between private insurers and dialysis facilities were more irresponsible than unfortunate, as they had previously been characterized, and that legislative involvement was not the most appropriate course of action. However, Mr. Stratton stated, when negotiating parties fail to retain a genuine concern for individuals who are affected by the negotiations the parties fail in their responsibility as good corporate citizens, so he later determined that the General Assembly's intervention in the situation may be necessary to protect the individual patients.

Mr. Stratton articulated his belief that financial well-being of the parties must be balanced with quality patient care and shared his hope that the Committee's involvement may begin to shift the manner in which contract negotiations occur with respect to dire medical circumstances for which treatment is not negotiable. He stated that his recommendations would be to ensure particular safeguards for ESRD treatment such as advance notice of coverage changes so there is sufficient time before a change occurs for a patient to make arrangements for care, no interruption of ongoing treatment, ensuring good faith in negotiations, and guidelines for dialysis treatment with flexibility for changes over time. Mr. Stratton encouraged dialysis facilities and insurers to participate in the Committee's work by making recommendations to ensure good faith negotiations and appropriate care of patients.

Rep. Herrell complimented Mr. Stratton's leadership of the Committee. He stated that retroactivity of any action resulting from the Committee's work is important to him as patients have encountered problems caused by the disagreements and those problems should be rectified.

Rep. Fry requested information from Ms. Bartlett, the fiscal analyst for the Committee, regarding the number of Medicaid patients in Indiana who are on hemodialysis and the reimbursement provided under Medicaid for the treatment.

At Mr. Stratton's request, Ms. Naughton, the attorney for the Committee, presented an overview of PD 3252² concerning coverage for dialysis treatment. There was general discussion among the members concerning the PD.

Rep. Torr and Sen. Becker complimented Mr. Stratton regarding his leadership. Rep. Torr expressed his reluctance to statutorily require certain private business contract provisions, though he understands and appreciates the efforts of the Committee. Sen. Becker expressed her interest in hearing from members of the public concerning proposed legislation. She articulated her belief that dialysis patients have a condition that requires a different type of treatment than is typical of physical illnesses in general. She requested that Ms. Bartlett also provide information regarding the number of Medicare patients in Indiana who are on hemodialysis and the reimbursement provided under Medicare for the treatment.

Rep. Fry complimented Mr. Stratton on his leadership of the Committee and expressed his desire for comments from the public regarding any legislation. He shared his desire to bring balance to the negotiations and that he is unsure how that will be accomplished at this point without legislative intervention.

At Mr. Stratton's request, Ms. Naughton presented an overview of PD 3253³ concerning coverage for dialysis treatment. Mr. Stratton then requested comments concerning the PDs from those in attendance.

Anne Doran, America's Health Insurance Plans, expressed various concerns regarding both PDs, particularly that they essentially negate the ability of a private insurer to utilize a network for dialysis treatment. She advocated that the Committee receive information from dialysis facilities regarding the cost of dialysis treatment, stating that much information has been requested by the Committee regarding reimbursement for dialysis treatment. She noted the need for flexibility and competition in the marketplace as changes occur in the future and the effect of legislation on flexibility and competition. Ms. Doran stated that she has received no contact from anyone regarding a patient being harmed from something that a private insurer has done with respect to dialysis treatment coverage and that any legislation should be based on facts, not on one letter which was inappropriately sent out by one insurer and was later rescinded. (The letter was discussed during the September 3, 2008, meeting of the Committee.) She advocated a balanced final report of the Committee which would force both sides to the negotiating table and end the Committee's work with a true solution.

Mr. Stratton noted that the impact to the marketplace of contract negotiations is significant and that both sides need to come together to negotiate based on fact rather than emotion. Rep. Fry stated that dialysis facilities and insurers both express concern about the patient being primary, but that he sees evidence to the contrary. He noted that something needs to be done to resolve the issue for the patients' welfare, acknowledged that setting payment rates in statute may not be the best solution due to the resulting lack of flexibility, but that there will be a bill introduced during the 2009 session of the General Assembly as the issue has not yet been resolved. Rep. Torr expressed his belief that the Committee's involvement might actually be hindering negotiations if parties are waiting to see what the General Assembly will do. Rep. Herrell stated that, regardless of whether Ms. Doran has received any reports from patients concerning harm, there is obviously a

²Attachment 1.

³Attachment 2.

problem that needs to be resolved. Rep. Herrell suggested that perhaps binding arbitration is what is necessary to ensure good faith negotiations.

Matt Bassett, DaVita, stated that dialysis patients and the dialysis facility industry share the expressed concerns. He stated that DaVita is working on the national level to increase Medicare reimbursement rates and that PD 3253 is the preferred bill from his perspective as it returns dialysis facility payment to the level prior to the cuts that recently occurred and precipitated the formation of the Committee. Anthony Gabriel, M.D., DaVita, stated that DaVita does not balance bill and does not require changes by patients, and that he does not know (and does not think anyone knows) what the payment rate should be, but that PD 3253 would keep payment changes from being drastic.

Mr. Stratton responded that dialysis facilities and insurers should both know what the costs are related to dialysis treatment and what payment rates should be, and that they need to come together and negotiate a rate. He emphasized that the only reason that the Committee exists is that neither party was willing to respond to offers from the other party, decide what to give up, and reach an understanding. Mr. Bassett responded that one rate will not work for all dialysis facilities and that DaVita does know what its costs are. Rep. Herrell asked which party refuses to talk. Dr. Gabriel stated that discussions are ongoing.

Sen. Becker asked insurers and dialysis facilities to specify their recommendations for any legislation to resolve the disagreement. Mr. Bassett stated that flexibility and individual negotiations are needed. John Willey, Anthem, stated that the parties are negotiating currently. Rep. Fry expressed his concern that this issue is just the beginning of the issues that may arise between the dialysis facilities and the insurers and his hope that there is agreement among the parties that something needs to be done so that dialysis treatment continues to be available to patients who need it. Mr. Willey expressed his desire to resolve the issue prior to the General Assembly's convening in January, 2009. Mr. Bassett expressed his desire that the issue be addressed legislatively.

Rep. Fry asked Mr. Bassett how long DaVita will remain in business if reimbursement is too low, Mr. Bassett responded "as long as we can". Rep. Herrell shared Rep. Fry's concern about other issues arising in the future.

Matt Whetstone, Fresenius, stated that Fresenius plans to continue to grow in Indiana and that they are revisiting methods of decreasing costs. He acknowledged the need for balance. In response to a question from Sen. Becker, Mr. Whetstone stated that ESRD is different from other diseases and should be addressed differently.

Mr. Stratton asked Mr. Bassett whether DaVita would accept a payment rate decrease of 25% from the rate DaVita received in 2006. Mr. Bassett responded that such a decrease would be excessive as DaVita cannot become 25% more efficient in one year. Mr. Stratton asked Mr. Bassett whether a 15% decrease in the first year and 2% per year after that would be acceptable, noting that 3% per year (as allowed in PD 3253) is an insignificant decrease. Mr. Bassett stated that a 15% decrease would be too drastic.

Mr. Stratton stated that an additional meeting would be necessary for approval of any legislation and the final report, and that notice would be forthcoming. He requested specific recommendations, stating that clear direction would be needed from both parties for legislation to be appropriate.

With no further business to discuss, Mr. Stratton adjourned the meeting at 11:45 a.m.